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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,954	12/02/2003	Jeffrey L. Sands	10841; 60246-296	2882
21788	7590	12/18/2008		
RYNDAK & SURI LLP 200 W. MADISON STREET SUITE 2100 CHICAGO, IL 60606			EXAMINER KUMAR, RAKESH	
			ART UNIT 3651	PAPER NUMBER
			MAIL DATE 12/18/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/725,954

**Applicant(s)**

SANDS ET AL.

**Examiner**

RAKESH KUMAR

**Art Unit**

3651

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 2,3 and 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 24-29 is/are allowed.
- 6) ☒ Claim(s) 1,4-12 and 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 November 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 09/29/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**Final Rejection**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,18,19,21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Cihanek (US 5,813,569).

Referring to claims 1,21 and 23. Cihanek discloses an automated freezer (Figure 3) comprising:

a removable cartridge (42; Figure) for storing at least one item (94);  
a platform moveable (58) within said removable cartridge (42) in response to a request (request for removing the item from the top of the cartridge) for said at least one item (94),

a retention mechanism (62) to retain a portion of said at least one item (60; see multiple cartridges in freezer) in the automated freezer (Figure 3) when said cartridge (42) is removed from the automated freezer.

Referring to claim 18. Cihanek discloses a method for removing at least one item (94) from an automated freezer (Figure 3), the method comprising the steps of:  
loading the at least one item (94) into a cartridge (42);

loading the cartridge (42) in the automated freezer (Figure 3);  
sending a request (request for removing the item from the top of the cartridge) to  
the automated freezer; and

automatically removing the at least one item (94) from the automated freezer in  
response to said request (request for removing the item from the top of the cartridge).

Referring to claim 19.22. The articles removed from the freezer can be  
transferred to any area once the articles are removed from the dispenser.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all  
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4,5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over  
Cihanek in view of Kaufman (US 5,335,816).

Referring to claim 4 and 7. Cihanek discloses all claimed limitations as recited in  
claim 4 however Cihanek does not disclose a removal device.

Kaufman discloses an apparatus including a removal device (138; Figure 8) and  
an exit opening (132), and said removal device (138) removes said at least one item  
(136) from the dispenser through said exit opening (132) in response to said request

(request for removing the item from the top of the cartridge). Wherein said removal device is pivotal (Figure 7 and 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek to include a removal device wherein the removal device removes an item from the freezer in response to a request as taught by Kaufman because a removal device would improve the removal of items from the dispenser.

Regarding claim 5, Kaufman teaches of an apparatus wherein said platform (122) raises after said at least one item (102) exits said dispenser through said exit opening (132).

Claims 6,8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cihanek in view of Kaufman and further in view of Mishina (US 5,555,965).

Referring to claims 6 and 20, Mishina discloses a depletion sensor (134 and 138) strategically placed, wherein the sensor detects complete product depletion (Col. 7 line 54-65). Furthermore, Mishina discloses visual indicator disposed on the dispenser to indicate when said sensor detects that the product is empty (Col. 5 line 44).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek in view of Kaufman to include a depletion sensor, which detects complete product depletion as taught by Mishina because the dispenser would not activate the removal device when the items within the

dispenser are depleted thus reducing access wear on the removal device in response to a request.

Regarding claim 8, Kaufman discloses an apparatus further including a controller (22;CPU; Figure 12) associated with the automated dispenser and a POS (point of service device including one of 30,26,58,56,18; Figure 12) device, and wherein said request comprises a signal sent by said POS device (a request from one of 30,26,58,56,18; See Figure 12).

Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Cihanek as applied to claim 1 above, and further in view of Tansley (US 2,315,827).

Referring to claim 9. Tansley discloses a dispenser wherein the cartridge (10; Figure 1) has a substantially circular inner profile.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek to include a cartridge comprising a circular inner profile to house articles as taught by Tansley because the dispenser would be able to dispense circular shaped articles.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cihanek as applied to claim 1 above, and further in view of Covington (US 4,142,863).

Referring to claim 10. Covington discloses a cartridge (Figure 1) includes a first portion (12) and a second portion (14), and said first portion (12) is removably attached

to said second portion (14; see Figure 3) by an attachment feature (see flanges expending at wall edges of member 14; Figure 3), and said first portion (12) includes a first bottom end having a first half-circular (32; semicircular) cutout and said second portion (14) includes a second bottom end having a second half-circular cutout (32; semicircular), said first half-circular (12) cutout and said second half-circular cutout (14) define a circular cutout (see member 32; Figure 5) when said first portion (12) is attached to said second position (14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek to include a cartridge comprising a first and second portion having a semi circular cutout at the base of the portions as taught by Covington because the platform could be moved within the cartridge through an external driving means thus reducing the cost for the replacement cartridges.

Regarding claims 11 and 12. Covington discloses an article dispenser wherein the platform (top end of member 30; Figure 3) has a platform diameter (diameter of top end of member 30) and the circular cutout (32) has a cutout diameter (Figure 3), and said cutout diameter is greater than the platform diameter (see Figure 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek to include a platform diameter smaller than the cutout diameter as taught by Covington because the driving means of the articles would be integrated outside the cartridge thus reducing cost of the replacement cartridge.

***Allowable Subject Matter***

Claims 24-29 allowed.

***Response to Arguments***

Applicant's argues "Cihanek fails to disclose a retention mechanism to retain a portion of said a least one item." In view of the Office the retention mechanism (62) as disclosed by the teachings of Cihanek retains at least on item as can be seen in Figure 3.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the retention mechanism as recited by the applicant simply retains an item) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.



**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAKESH KUMAR whose telephone number is (571) 272-8314. The examiner can normally be reached on M-F 8 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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